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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/810,413

03/26/2004

Juliana Marie Hunt

50132.0001

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08/16/2006

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EXAMINER

HOEY, ALISSA L

ART UNIT

PAPER NUMBER

3765

DATE MAILED: 08/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |  |  |
|------------------------------|--------------------------------------|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/810,413 | <b>Applicant(s)</b><br>HUNT, JULIANA MARIE |  |
|                              | <b>Examiner</b><br>Alissa L. Hoey    | <b>Art Unit</b><br>3765                    |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08/04/06.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 1-13,15,19,21-27,29,30,32 and 33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14,16-18,20,28 and 31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>03/26/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of species IV (figures 5 and 6) in the reply filed on 08/04/06 is acknowledged. The traversal is on the ground(s) that the search would cover all species of the invention and not be burdensome to the examiner.

*Examiner notes that this is an election of species requirement and that upon allowance of a generic independent claim, all species are able to be brought into the case*

*Further, Examiner notes that figures species IV (figures 7 and 8) do not read on all the claims as indicated by the applicant of 1-2, 4-12, 14, 16-18, 20-22, 24, 26, 28 and 31. The claims readable of figures 7 and 8 are 14, 16-18, 20, 28 and 31. Claims 1-2, 4-12, 21, 22, 24 and 26 all require one or more of the following; that the chest portion is designed to be worn above a wearer's breastline, the back portion and chest portion are cut such that they end proximate the wearer's armpits, the front portion extending only between the first and second armpit portion and the first and second shoulder covering portions. Figures 7 and 8 show the front portions extending down below the breastline and wearer's armpits.*

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 112***

2. Claim 20 contains the trademark/trade name Velcro. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second

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paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe hook and loop fasteners and, accordingly, the identification/description is indefinite.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 14, 17, 18 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Fowler (US 1,250,836).

In regard to claim 14, Fowler teaches an article of clothing comprising a front, back and a pair of sleeves (figures 1-3). The front comprises first and second closable flaps disposed between the sleeves, the first and second closable flaps cut at least partially above the breastline (figure 1).

In regard to claim 17, Fowler teaches at least one anchor line extending from a bottom of the front portion (16, 17).

In regard to claim 18, Fowler teaches two anchor lines (16, 17) having free ends extending from a bottom portion of the front.

In regard to claim 28, Fowler teaches an article of clothing comprising a sleeved outer garment extending only from a shoulder region to a midriff section (figures 1-3). First and second anchor lines (16, 17) attached to a bottom portion of the article of clothing.

5. Claims 14 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Jones (US 4,706,304).

In regard to claim 14, Jones teaches an article of clothing comprising a front, back and a pair of sleeves (figure 4). The front comprises first and second closable flaps disposed between the sleeves, the first and second closable flaps cut at least partially above the breastline (figure 4).

In regard to claim 20, Jones teaches the two flaps comprise Velcro attachments (38).

6. Claim 31 is rejected under 35 U.S.C. 102(b) as being anticipated by Mathias (US 2,045,157).

In regard to claim 31, Mathias teaches a jacket comprising a collar, first and second sleeves, a first and second shoulder covering portions and first and second armpit portion (figures 1-3). A front portion having a middle portion and a first side portion adjacent the first armpit portion (figures 1-3). The first side portion extending only between the first armpit portion and the first shoulder portion (figures 1-3). A second portion adjacent the second armpit portion (figures 1-3). The second side

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portion only extending between the second armpit portion and the second shoulder covering portion (figures 1-3). A first arc extending up from the first armpit portion toward the collar and back down to the middle portion (figures 1-3). A second arc extending up from the second armpit portion toward the collar and back down to the middle (figures 1-3).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fowler.

Fowler teaches a garment as described above in claim 14. However, Fowler fails to teach the back extending in a generally V-shape from an armpit region of the article of clothing to a hip region.

Examiner notes that the back portion having a V-shape downwardly extending edge has not been disclosed in the specification as providing any critical or unexpected results arising from the v-shaped back portion. Therefore, the shape of the back portion can take on any desired shape include a V-shape, downwardly extending back portion or an upwardly extending arc, because as long as the back portion is provided in a garment that has front flaps that at least partially extend above the breastline the back portion can be any configuration.

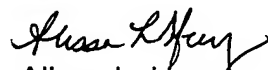
***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure can be found on the PTO 892 form.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
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Primary Examiner  
Technology Center 3700